

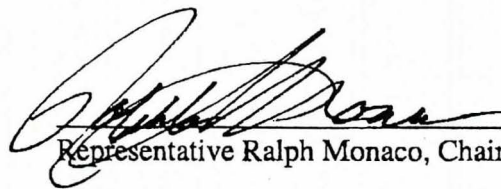
**REPORT
OF THE
HOUSE INTERIM COMMITTEE
ON
MERCHANDISING PRACTICES
(NO-CALL TELEMARKETING)
2001**

November 30, 2001

The Honorable Jim Kreider, Speaker
Missouri House of Representatives
Room 308
State Capitol
Jefferson City, Missouri 65101

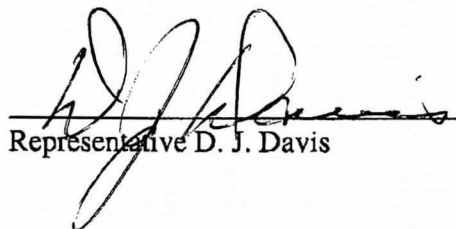
Dear Mr. Speaker:

Your Interim Committee on Merchandising Practices (No-Call Telemarketing), which was assigned the task of reviewing telemarketing fraud and telemarketing no-call practices in Missouri, has met, taken testimony, deliberated, and concluded its study. The undersigned members of the Committee are pleased to submit the attached report.

 (49)
Representative Ralph Monaco, Chairman

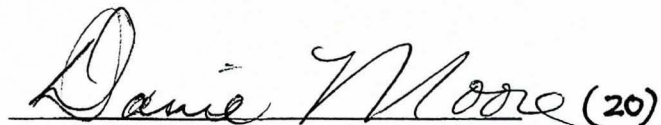
Representative Craig Bland

Representative Rick Johnson

 (122)
Representative D. J. Davis

 (133)
Representative Ronnie Miller

Representative James Foley

 (20)
Representative Danielle Moore

 #5
Representative Daniel Hegeman

 (124)
Representative Rex Rector

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On October 24, 2001, Speaker of the Missouri House of Representatives, Jim Kreider, in his wisdom appointed members of the House of Representatives having no-call telemarketing expertise to review Missouri's No-Call Telemarketing Law.

CHARGE OF THE COMMITTEE

The House Interim Committee on Merchandising Practices was charged by the Speaker of the House, Jim Kreider, with reviewing existing telemarketing fraud and telemarketing no-call practices. The Committee was to review maintenance, operation, cost, and enforcement of the no-call database.

COMMITTEE MEMBERS

The Speaker of the House appointed the following members:

Representative Ralph Monaco, Chairman
Representative Craig Bland
Representative D. J. Davis
Representative James Foley
Representative Daniel Hegeman
Representative Rick Johnson
Representative Ronnie Miller
Representative Danielle Moore
Representative Rex Rector

Staff: Paula McCurren – Legislative Assistant
Roland Tackett – House Research Staff

COMMITTEE ACTIVITIES

The Committee held meetings around the state to seek public testimony concerning problems and possible solutions to all matters of concern relating to no-call telemarketing. The meetings were held as follows:

November 6, 2001 – Raytown

November 12, 2001 – Springfield

Note: The Committee toured the MCI Telemarketing Center in Springfield prior to the public hearing.

November 19, 2001 – St. Louis

Note: The Committee toured the Attorney General's St. Louis No-Call Unit prior to the public hearing.

November 27, 2001 – Jefferson City

Note: Work session followed the hearing.

RECOMMENDATIONS

Mr. Speaker, your Interim Committee on Merchandising Practices (No-call Telemarketing) respectfully submits the following recommendations after review, public hearings, and deliberation.

- 1. The acronym ADAD found in Section 407.1095 (3), RSMo, should be clarified and defined in statute. "ADAD" or "automatic dialing and announcing device" is defined in rule 15CSR60-13.010(2) (A) as any device or system which is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing**

telephone numbers and disseminating recorded messages to the numbers so selected.

2. “Current business relationship” as found in Section 407.1095.(3) (b) and “established business relationship” as found in Section 407.1070 (4) should be reconciled under one definition in statute to avoid confusion.

3. In Section 407.1095 (3) (b) “had a business contact within the past one hundred eighty days or” should be deleted from that subsection. The 180-day qualifier expands “current business or personal relationship” and makes the exception an ongoing exception, if contact of any kind can be documented. Deleting the 180-day qualifier would bring internal consistency to the law if the definition change in #2 above is likewise adopted.

4. Sanctions against entities exempted under the Federal Trade Commission’s (FTC) Telemarketing Sales Rule, which provides for up to a \$500 penalty as opposed to Missouri’s No-Call Law which provides for up to \$5,000 penalties, should be increased to be consistent with Missouri’s No-Call Law. Further revisions, if any, to the FTC exemption should be revisited if after one more year of experience the Attorney General’s Office finds an increase in violations by entities exempted under FTC rules.

WITNESSES AND TESTIMONY

Witnesses appearing before the Committee:

Raytown

1. Timothy Taylor – Mr. Taylor views telemarketing as an invasion of his privacy, contributing to erosion of a person's time and the use of a device he is paying for to make a sale he has not solicited and in which he has no interest. He encouraged the Committee to examine carefully exemptions to a law he both supports and applauds.

2. Bennie Daugherty, Jr, AARP – Mr. Daugherty stated on behalf of AARP that in addition to protection of privacy, the law helps reduce misleading, deceptive, or fraudulent calls, for which older people are particularly targeted and vulnerable. The organization wants removal of all exemptions including the exemption of entities covered by the Federal Trade Commission's Telemarketing Sales Rule, which burdens consumers to give a do-not-call message to each telemarketer; business contact within 180 days; and persons calling to set appointments, responding to a referral, or working from their residence.

3. James Klahr, Missouri Attorney General's Office – Mr. Klahr stated that the law reflects the federal law but provides for state enforcement, is funded by the Merchandising Revolving Fund (subject to appropriation), has been to date four times more successful than anticipated (800,000 phone numbers or 2.2 million people participating), and unlike some other states is free to the consumer.

4. Doug Nelson, Missouri Attorney General's Office – Mr. Nelson informed the Committee of the administration, cost, and enforcement of the law.

Springfield

1. Dave Nahon, Jr., MCI Worldcom – Mr. Nahon told the Committee MCI wants the law left as it is. Telemarketing is the most effective and efficient way to reach consumers and MCI is already regulated by the Federal Trade Commission.

2. James Klahr, Missouri Attorney General's Office – Mr. Klahr gave the Committee a summary of expenditures by the Attorney General's Office on setup and enforcement of the law.

3. Rex Burlison, Missouri Attorney General's Office – Mr. Burlison in his capacity as Chief Counsel for the Eastern District of Missouri told the Committee his office contacted all telemarketers to inform them of the law, felt the no-call list aided telemarketers by listing phone numbers they should not waste resources calling, and supplied information regarding

enforcement of the law.

St. Louis

1. Norma Collins, lobbyist for AARP in Missouri – Ms. Collins restated AARP's position on no-call exemptions.
2. Jeremiah Nixon, Missouri Attorney General – Mr. Nixon wishes to remove certain exemptions from the law thereby allowing his office to better serve the 863,593 numbers or 2.5 million Missourians requesting protection under the law and informed the Committee that the no-call list's integrity was necessary and must be funded. He stated that his office had proceeded with 54 actions for non-compliance and 735 companies are using the no-call list. He referred to telemarketing as electronic trespass in spite of a do-not-disturb sign.

Jefferson City

1. Ric Telthorst, Missouri Telecommunications Industry Association – Mr. Telthorst provided a history of the federal law and compared it to the state law. He told the Committee that in addition to federal and state law, the Direct Marketing Association has established a national voluntary do-not-call list. With three layers of public protection in place he could see no need for additional regulation by the state.
2. Sam Licklider, Missouri Funeral Directors Association and Missouri Association of Realtors – Mr. Licklider opposes the removal of the exemption found in Section 407.1095 (3) (e), RSMo. "By a natural person responding to a referral or working from his or her primary residence or a person licensed by the state of Missouri to carry out a trade, occupation, or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation, or profession within the state or counties contiguous to the state."
3. Randy Scherr, Life Insurance Association of Missouri – Mr. Scherr provided the Committee with a history of the legislation and broke it into two components, fraud and inconvenience.
4. James Klahr, Missouri Attorney General's Office – Mr. Klahr informed the Committee that both telemarketers and consumers need an accurate no-call list and that complaints against telemarketers are declining. He further restated the Attorney General's position on exemptions.
5. David Overfelt, Missouri Retailers Association – Mr. Overfelt provided the Committee with information concerning the necessity for retailers to contact consumers about store credit cards and service contracts.



The No Call Law allows Missourians to reduce unwanted telemarketing calls to their homes. The state law prohibits telemarketers from calling households that have been added to the list, with some exceptions that have been written into the law. Missourians can register their home phone numbers for the No Call List, which will be managed and enforced by the Missouri Attorney General's Office.

FREQUENTLY ASKED QUESTIONS ABOUT MISSOURI'S NO CALL LAW

What is the Missouri No Call List?

The No Call List is a list of residential phone numbers of Missourians who have indicated to the Attorney General's Office that they don't want to be called by telemarketers at their homes. The law prohibits telemarketers from calling households that have been added to the list, with some exceptions that have been written into the law. If your household has more than one number, you can register any or all of those numbers.

When does the list take effect?

The new law states that enforcement of the No Call List by the Attorney General cannot begin until July 1, 2001.

How do I get my name on the No Call List?

You may register by calling toll-free 866-NOCALL1 or by completing an electronic form on the Attorney General's Web site at www.moago.org.

If my name is on the list, will I receive any telemarketing calls?

The law allows some telemarketers to continue calling consumers on the No Call List. Exceptions include calls from:

- Telephone companies.
- Those that have a current business relationship with you.
- Those that you have expressly invited or permitted (for example, filling your name and number on an entry form).
- Certain not-for-profit groups if the person calling is a member of the group.
- Persons calling on a referral or working from their homes, or any person licensed for a trade or profession who is setting or attempting to set an appointment.

What is the cost to get my name on the list?

There is no cost to consumers to get on the list. There will be a cost to telemarketers to get copies of the list.

Can I register my business or office telephone?

No. The law does not allow business phone numbers to be included on the No Call List.

What are the penalties if a telemarketer calls me in violation of the law?

A telemarketer who violates the law faces a civil penalty of up to \$5,000 for each knowing violation.

REGISTRATION DATES

What is the latest date I can sign up for the initial No Call List to prevent telemarketers from calling me on July 1, 2001, when enforcement of the law begins?

You must register by May 1 to get your name on the first list sent to telemarketers. The Missouri Attorney General's Office will submit names every three months to allow telemarketers time to add names to their no-call lists.

If I don't register by May 1, how soon must I sign up to get on the next group of names sent to telemarketers?

By Aug. 1. The Attorney General's Office will submit names to telemarketers every three months, following this schedule:

If you register by:	Telemarketers can't call you after:
May 1	July 1
Aug. 1	Oct. 1
Nov. 1	Jan. 1
Feb. 1	April 1

PRINTED 11-00

Call or visit the Attorney General's Web site to join the No Call List:

Call toll-free 866-NOCALL1

or

Click www.moago.org

13,051

NO **CALL** **COMPLAINTS**

8,195

3,905
Exempt
complaints

4,856

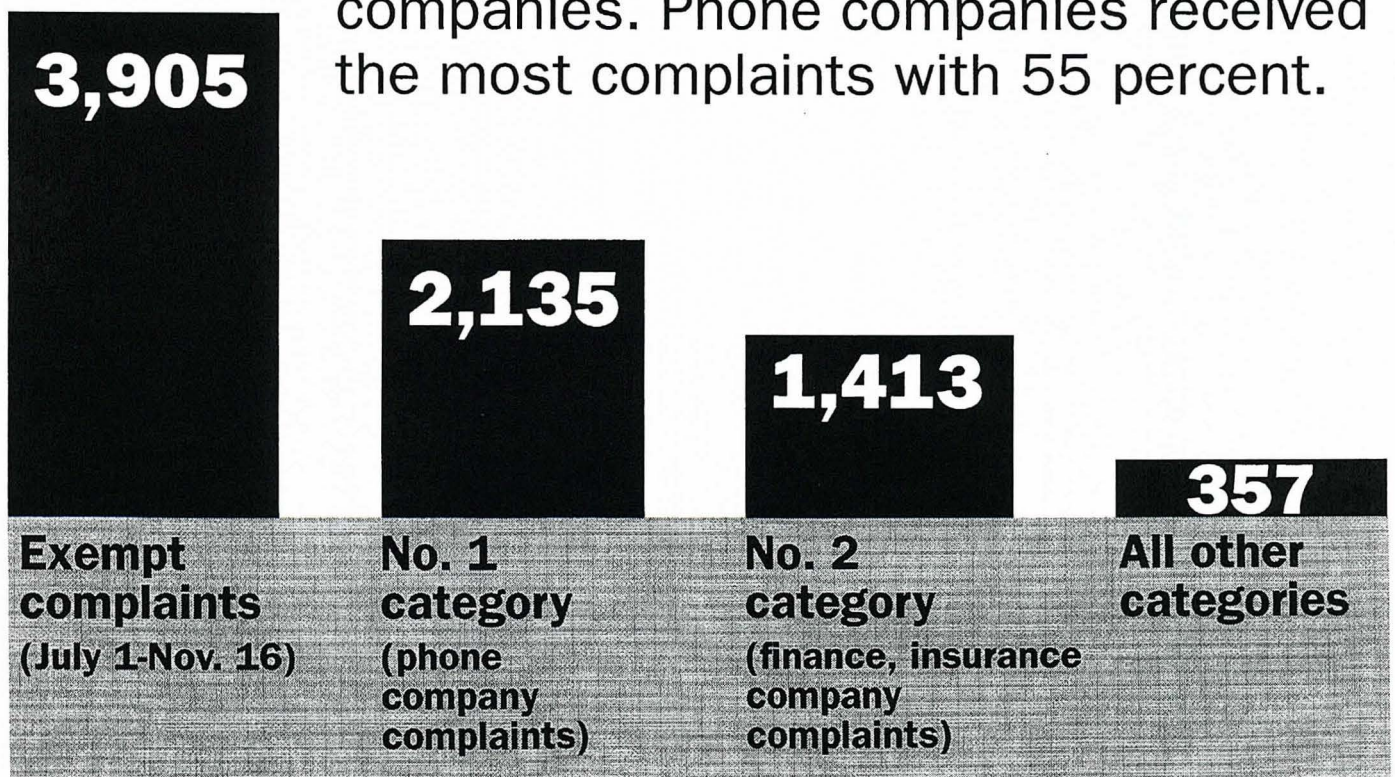
Total
complaints
(July 1-Nov. 16)

Closed
complaints

Open
complaints

NO **CALL** **EXEMPTIONS**

Ninety-one percent of all exempt complaints were made against phone, finance and insurance companies. Phone companies received the most complaints with 55 percent.



Various states' No Call enforcement actions as of Nov. 21, 2001.

State	phone lines on the list	annual cost to consumers	enforcement actions and penalties	date enforcement began
Missouri	864,000	no charge	54 telemarketers/ \$450,000	July 2001
Alabama	35,300	no charge	0 telemarketers	July 2000
Arkansas	32,800	\$5	3 telemarketers/ \$15,000	Jan. 2000
Colorado	40,000	no charge	law is not yet enforceable	July 2002
Conn.	750,000	no charge	0 telemarketers	Jan. 2001
Florida	143,419	\$10/ \$5 annual renewal	approx. 60 telemarketers/ \$750,000 (\$146,000 collected this year)	1995
Georgia	224,491	\$5/2 years	5 telemarketers/ \$160,000	1999
Indiana	115,000	no charge	law is not yet enforceable	Jan. 2002
Kentucky	123,000	no charge	0 telemarketers	July 1998
New York	1,800,000	no charge	approx. 25 companies have been sent warnings/ \$0	May 2001
Oregon	43,000	\$6.50/ \$3 annual renewal	116 telemarketers/ approx. \$300,000	Jan. 2000
Tennessee	636,304	no charge	14 telemarketers/ \$55,000	Aug. 2000
Texas	0	\$3/ 3years	law is not yet enforceable	Jan. 2002



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

65102

P. O. Box 899
(573) 751-3321

ATTORNEY GENERAL OF MISSOURI

MEMORANDUM

TO: House Interim Committee on Telemarketing

FROM: James Klahr, Assistant Attorney General *JK*

DATE: December 5, 2001

SUBJECT: No Call Complaints Received by Month Since July 1, 2001

As the Committee has requested, here is a month-by-month breakdown of the complaints, including complaints that our office determined were not enforceable under the current No Call Law.

<u>Month:</u>	<u>Total Complaints:</u>	<u>Exempt Complaints:</u>	<u>% Exempt:</u>
July	5,317	1,218	22.9%
August	3,279	1,064	32.4%
September	1,525	575	37.7%
October	2,118	846	39.9%
November	<u>1,689</u>	<u>530</u>	<u>31.4%</u>
Totals:	13,928	4,233	30.4%

As you can see from these figures, both total complaints and exempt complaints declined from July to September, increased in October, and declined again in November.

House Interim Committee on Telemarketing

Page 2

December 4, 2001

Based on communication with our No Call Team members, a vast number of No Call registrants are aware of the existing exemptions thereby reducing the number of complaints against exempt telemarketers since the list first took effect. However, the percentage of complaints against exempt telemarketers has continued to represent 30% of the total complaints received by our office.



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

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MEMORANDUM

TO: Members of House Interim Committee on Merchandising Practices

FROM: James Klahr *JHK*
Assistant Attorney General

DATE: November 13, 2001

RE: Attorney General's Expenditures to Implement Provisions of No Call
Law (SB 763)

Per the committee's request of November 6, 2001 for this office's expenditures to implement the No Call law, here is the breakdown of costs.

NO CALL EXPENDITURES THROUGH OCTOBER 31, 2001

Expense and Equipment	\$665,855
Personal Services	<u>\$223,310</u>
Total	\$889,165

All expenditures have been made from the Merchandising Practices Revolving Fund as provided for in SB 763.

cb

Missouri Revised Statutes

Chapter 407 Merchandising Practices Section 407.1095

August 28, 2000

Definitions.

407.1095. As used in sections 407.1095 to 407.1110, the following words and phrases mean:

- (1) "Caller identification service", a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls;
- (2) "Residential subscriber", a person who has subscribed to residential telephone service from a local exchange company or the other persons living or residing with such person;
- (3) "Telephone solicitation", any voice communication over a telephone line from a live operator, through the use of ADAD equipment or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, but does not include communications:
 - (a) To any residential subscriber with that subscriber's prior express invitation or permission;
 - (b) By or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past one hundred eighty days or a current business or personal relationship;
 - (c) By or on behalf of an entity organized pursuant to Chapter 501(c)(3) of the United States Internal Revenue Code, while such entity is engaged in fund-raising to support the charitable purpose for which the entity was established provided that a bona fide member of such exempt organization makes the voice communication;
 - (d) By or on behalf of any entity over which a federal agency has regulatory authority to the extent that:
 - a. Subject to such authority, the entity is required to maintain a license, permit or certificate to sell or provide the merchandise being offered through telemarketing; and
 - b. The entity is required by law or rule to develop and maintain a no-call list;
 - (e) By a natural person responding to a referral, or working from his or her primary residence, or a person licensed by the state of Missouri to carry out a trade, occupation or profession who is setting or attempting to set an appointment for actions relating to that licensed trade, occupation or profession within the state or counties contiguous to the state.

(L. 2000 S.B. 763)

Missouri Revised Statutes

Chapter 407 Merchandising Practices Section 407.1098

August 28, 2000

Telephone solicitation of member on no-call list prohibited.

407.1098. 1. No person or entity shall make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has given notice to the attorney general, in accordance with rules promulgated pursuant to section 407.1101 of such subscriber's objection to receiving telephone solicitations.

2. This section shall take effect on July 1, 2001.

(L. 2000 S.B. 763)

Effective 7-1-01



Missouri General Assembly

Missouri Revised Statutes

Chapter 407

Merchandising Practices

Section 407.1101

August 28, 2000

Attorney general to create no-call list database--rules--inclusion of national database--database not a public record--no cost to subscribers.

407.1101. 1. The attorney general shall establish and provide for the operation of a database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations. The attorney general shall have such database in operation no later than July 1, 2001.

2. No later than January 1, 2001, the attorney general shall promulgate rules and regulations governing the establishment of a state no- call database as he or she deems necessary and appropriate to fully implement the provisions of sections 407.1095 to 407.1110. The rules and regulations shall include those which:

- (1) Specify the methods by which each residential subscriber may give notice to the attorney general or its contractor of his or her objection to receiving such solicitations or revocation of such notice. There shall be no cost to the subscriber for joining the database;
- (2) Specify the length of time for which a notice of objection shall be effective and the effect of a change of telephone number on such notice;
- (3) Specify the methods by which such objections and revocations shall be collected and added to the database;
- (4) Specify the methods by which any person or entity desiring to make telephone solicitations will obtain access to the database as required to avoid calling the telephone numbers of residential subscribers included in the database, including the cost assessed to that person or entity for access to the database;
- (5) Specify such other matters relating to the database that the attorney general deems desirable.

3. If the Federal Communications Commission establishes a single national database of telephone numbers of subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C., Section 227(c)(3), the attorney general shall include that part of such single national database that relates to Missouri in the database established pursuant to this section.

4. Information contained in the database established pursuant to this section shall be used only for the purpose of compliance with section 407.1098 and this section or in a proceeding or action pursuant to section 407.1107. Such information shall not be considered a public record pursuant to chapter 610, RSMo.

5. In April, July, October and January of each year, the attorney general shall be encouraged to obtain subscription listings of consumers in this state who have arranged to be included on any national do-not-call list and add those names to the state do-not-call list.

6. The attorney general may utilize moneys appropriated from general revenue and moneys appropriated from the merchandising practices revolving fund established in section 407.140 for the purposes of establishing and operating the state no-call database.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 407.1095 to 407.1110 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.

(L. 2000 S.B. 763)



Missouri General Assembly

Missouri Revised Statutes

Chapter 407 Merchandising Practices Section 407.1104

August 28, 2000

Caller identification service, telephone solicitor not to interfere with subscriber's use of service.

407.1104. 1. Any person or entity who makes a telephone solicitation to the telephone line of any residential subscriber in this state shall, at the beginning of such call, state clearly the identity of the person or entity initiating the call.

2. No person or entity who makes a telephone solicitation to the telephone line of a residential in this state shall knowingly use any method to block or otherwise circumvent such subscriber's use of a caller identification service.

(L. 2000 S.B. 763 § 407.1107)

Effective 7-1-01



Missouri General Assembly

Missouri Revised Statutes

Chapter 407 Merchandising Practices Section 407.1107

August 28, 2000

Penalties, attorney general to enforce--civil, criminal, injunctive relief--private actions--defenses--statute of limitations.

407.1107. 1. The attorney general may initiate proceedings relating to a knowing violation or threatened knowing violation of section 407.1098 or 407.1104. Such proceedings may include, without limitation, an injunction, a civil penalty up to a maximum of five thousand dollars for each knowing violation and additional relief in any court of competent jurisdiction. The attorney general may issue investigative demands, issue subpoenas, administer oaths and conduct hearings in the course of investigating a violation of section 407.1098 or 407.1104.

2. In addition to the penalties provided in subsection 1 of this section, any person or entity that violates section 407.1104 shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130. The remedies available in this section are cumulative and in addition to any other remedies available by law.

3. Any person who has received more than one telephone solicitation within any twelve-month period or on behalf of the same person or entity in violation of section 407.1098 or 407.1104 may either:

(1) Bring an action to enjoin such violation;

(2) Bring an action to recover for actual monetary loss from such knowing violation or to receive up to five thousand dollars in damages for each such knowing violation, whichever is greater; or

(3) Bring both such actions.

4. It shall be a defense in any action or proceeding brought pursuant to this section that the defendant established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of section 407.1098 or 407.1104.

5. No action or proceeding may be brought pursuant to this section:

(1) More than two years after the person bringing the action knew or should have known of the occurrence of the alleged violation; or

(2) More than two years after the termination of any proceeding or action arising out of the same violation or violations by the state of Missouri, whichever is later.

6. A court of this state may exercise personal jurisdiction over any nonresident or his or her executor or

administrator as to an action or proceeding authorized by this section in the manner otherwise provided by law.

7. The remedies, duties, prohibitions and penalties of sections 407.1095 to 407.1104 are not exclusive and are in addition to all other causes of action, remedies and penalties provided by law.

8. No provider of telephone caller identification service shall be held liable for violations of section 407.1098 or 407.1104 committed by other persons or entities.

9. Section* 407.1104 and this section shall take effect on July 1, 2001.

(L. 2000 S.B. 763 § 407.1110)

Effective 7-1-01

*Word "sections" appears in original rolls.



Missouri General Assembly

Missouri Revised Statutes

Chapter 407 Merchandising Practices Section 407.1110

August 28, 2000

Advisory group for consumer protection from telemarketers--publication of information on consumer rights.

407.1110. The attorney general shall establish an advisory group composed of government entities, local telecommunications companies, businesses, and senior citizen and other community advocates to compile and promote a list of educational literature to help consumers understand their options with regard to telephone solicitations. The attorney general shall work with local exchange telecommunications companies to disseminate to their residential subscribers information about the availability of and instructions about how to request educational literature from the attorney general. The attorney general may enter into agreements with those companies for the purpose of dissemination of the educational literature. The attorney general shall include on his or her Internet web site information that informs residential subscribers of their rights to be placed on a no-call list and the various methods, including notice to the attorney general, of placing their names on this no-call list. The attorney general shall have this literature developed for dissemination to the public no later than January 1, 2001.

(L. 2000 S.B. 763 § 407.1113)



Missouri General Assembly



Rules promulgated pursuant to the No Call Law

Title 15 -- ELECTED OFFICIALS

Division 60 -- Attorney General

Chapter 13 -- Rules for the Establishment of a Missouri No-Call Database

15 CSR 60-13.010 Definitions.

Purpose: This rule clarifies that the definitions pertaining to the establishment of a Missouri no-call database created by residential subscribers providing notice to the Attorney General of their objection to receiving telephone solicitations are the same as those appearing in section 407.1095, RSMo 2000, and provides definitions for certain other terms used in that statute.

(1) The terms used in Chapter 13, Division 60, Title 15 of the Code of State Regulations bear the same meaning in the rules pertaining to the establishment of a no-call database as they do in section 407.1095, RSMo 2000, as amended from time to time. In addition, the term "telephone number" as used in Chapter 13, Division 60, Title 15 of the Code of State Regulations, is interchangeable with the term "telephone line" as used in section 407.1098, RSMo 2000, as amended from time-to-time.

(2) The following definitions further clarify terms used in section 407.1095, RSMo 2000 and Chapter 13, Division 60, Title 15 of the Code of State Regulations:

(A) "ADAD," also known as "automatic dialing and announcing device," means any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purposes of automatically selecting or dialing telephone numbers and disseminating recorded messages to the numbers so selected or dialed.

(B) "Bona fide member," for the purposes of section 407.1095(3)(c) RSMo means without regard to what a person is called in the articles or bylaws, any person or persons who on more than one occasion, pursuant to a provision of the Chapter 501 (c)(3) entity's articles or bylaws, have a right to vote for the election of a director or directors; but a person is not a "bona fide member" by virtue of any of the following:

1. Any rights such person has as a delegate;
2. Any rights such person has to designate a director or directors;
or
3. Any rights such person has as a director.

(C) "Business contact" means a specific oral or written communication at a verifiable date and time;

(D) "Current business relationship" means a relationship characterized by reciprocal communication between the person or entity interested in calling the residential subscriber;

(E) "Person" exclusively for the purposes of section 407.1095(2), RSMo means

a natural person who has reached the legal age set forth in section 431.055, RSMo, as amended, and authorized by the residential subscriber to grant telephone solicitors express invitation or permission to call the residential subscriber's telephone number; and if the residential subscriber has not reached the legal age, set forth in section 431.055, RSMo, as amended, person shall mean his or her parent or legal guardian.

(F) "Prior express invitation or permission" means a specific oral or written grant of authority made by the residential subscriber at a verifiable date and time authorizing a person or entity interested in making telephone solicitations to call the residential subscriber's telephone number for the purposes of making a telephone solicitation;

(G) "Referral" means a communication at a verifiable date and time to the person or entity interested in calling the residential subscriber's telephone number by a third party if the residential subscriber has previously contacted the third party indicating that the residential subscriber would welcome the call to his or her telephone number; and

(H) "Working from his or her primary residence" means conducting income generating activities from the location where the person interested in calling the residential subscriber's telephone number resides, but does not include calls that are normally made from a location other than that person's residence made by that person from his or her residence.

Authority: section 407.1101, RSMo (2000).

Title 15 -- ELECTED OFFICIALS**Division 60 -- Attorney General****Chapter 13 -- Rules for the Establishment of a Missouri No-Call Database****15 CSR 60-13.020 Methods by Which Residential Subscribers May Give Notice of Objection to Receiving Telephone Solicitations.**

Purpose: This rule describes the methods and mechanics of how residential subscribers may give the Attorney General notice of their objection to receiving telephone solicitations so that the Attorney General can establish Missouri's no-call database.

(1) A residential subscriber living or residing in Missouri, may give notice of his or her objection to receiving telephone solicitations, and thus, have his or her telephone number listed in Missouri's no-call database by doing any of the following:

(A) Completing a written form designed by the Attorney General's Office for the purpose of recording a residential subscriber's notice of objection to receiving telephone solicitations and submitting that completed form to the Attorney General's Office; or

(B) Calling a toll-free number established by the Attorney General's Office for the purpose of recording a residential subscriber's notice of objection to receiving telephone solicitations and properly responding to the voice prompts; or

(C) Accessing the appropriate Internet site established by the Attorney General's Office for the purpose of recording a residential subscriber's notice of objection to receiving telephone solicitations and inputting the proper data

requested by the website prompts.

(2) The no-call database shall consist of the aggregate collection of the telephone numbers of properly submitted notices of objection to receiving telephone solicitations. The Attorney General may maintain the no-call database in either a written or an electronic format.

(3) The telephone numbers of properly submitted notices of objection to receiving telephone solicitations shall become part of the no-call database in the quarter following the deadline for receipt of notice according to the following schedule:

Receipt Deadline	Calendar Quarter
November 1	January-March
February 1	April-June
May 1	July-September
August 1	October-December

Authority: section 407.1101, RSMo (2000).

Title 15 -- ELECTED OFFICIALS**Division 60 -- Attorney General****Chapter 13 -- Rules for the Establishment of a Missouri No-Call Database****15 CSR 60-13.030 Duration that a Residential Subscriber's Notice of Objection to Receiving Telephone Solicitations is Effective.**

Purpose: This rule sets forth the duration that a residential subscriber's notice of objection to receiving telephone solicitations is effective.

A notice of objection to receiving telephone solicitations shall remain in effect for two years from the date that telephone number first appears in the no-call database. The notice of objection shall be automatically renewed unless the residential subscriber to whom that telephone number is assigned provides written notice to the Attorney General's Office that he or she does not want the Attorney General to automatically renew the notice of objection. To facilitate a conscious choice by consumers, the Attorney General may send a notice letter explaining to the residential subscriber that his or her notice of objection to receiving telephone solicitation is due to expire and that it will be automatically renewed unless the residential subscriber returns the notice letter form indicating his or her preference otherwise.

Authority: section 407.1101, RSMo (2000).

Title 15 -- ELECTED OFFICIALS**Division 60 -- Attorney General****Chapter 13 -- Rules for the Establishment of a Missouri No-Call Database****15 CSR 60-13.040 Effect of A Change of Telephone Number on a Residential**

Subscriber's Notice of Objection to Receiving Telephone Solicitations.

Purpose: This rule describes the effect of a change of telephone number on a notice of objection to receiving telephone solicitations filed by a residential subscriber.

If a residential subscriber whose telephone number is part of the no-call database changes telephone numbers, he or she will have to submit a new notice of objection to receiving telephone solicitations pursuant to 15 CSR 60-13.020, subject to the deadlines therein, and provide the new telephone number to the Attorney General's Office.

Authority: section 407.1101, RSMo (2000).

Title 15 -- ELECTED OFFICIALS**Division 60 -- Attorney General****Chapter 13 -- Rules for the Establishment of a Missouri No-Call Database****15 CSR 60-13.050 Method by Which a Residential Subscriber or A Certificated Local Exchange Carrier May Revoke Notice of Objection to Receiving Telephone Solicitations.**

Purpose: This rule sets forth the method by which residential subscribers may revoke their notice of objection to receiving telephone solicitations.

A residential subscriber may revoke notice of objection to receiving telephone solicitations by completing a written form designed by the Attorney General's Office for the purpose of revoking a residential subscriber's notice of objection to receiving telephone solicitations and submitting that completed form to the Attorney General's Office. A residential subscriber may also revoke his or her notice of objection to receiving telephone solicitations by accessing the appropriate Internet site established by the Attorney General and inputting the proper data requested by the website prompts. Upon receipt of such revocation notice, the Attorney General's Office will remove the relevant telephone number from the no-call database according to the same schedule used for adding telephone numbers to the no-call database. In addition, the Attorney General's Office may remove a telephone number from the no-call database if the Missouri certificated local exchange carrier responsible for the assignment of the relevant telephone number indicates in writing or, if available, by Internet, to the Attorney General's Office that the residential subscriber who submitted the objection to receiving telephone solicitations is no longer assigned that telephone number.

Authority: section 407.1101, RSMo (2000).

Title 15 -- ELECTED OFFICIALS**Division 60 -- Attorney General****Chapter 13 -- Rules for the Establishment of a Missouri No-Call Database****15 CSR 60-13.060 Methods by Which a Person or Entity Desiring to Make Telephone Solicitations Will Obtain Access to the Database of Residential Subscribers' Notices of Objection to Receiving Telephone Solicitations and the Cost Assessed for Access to the Database.**

Purpose: This rule sets forth the methods by which persons or entities desiring to make telephone solicitations will obtain access to the database of residential subscribers' notices of objection to receiving telephone solicitations, and it sets forth the cost assessed for access to that database. Persons or entities obtaining copies of the no-call database are reminded that the no-call database is updated quarterly.

(1) A person or entity desiring to make telephone solicitations to residential subscribers residing or living in Missouri may obtain a copy of the no-call database for his, her or its lawful use, or for the lawful use by his, her or its employees, or for the lawful use by his, her or its independent contractors for use in their business, so long as the independent contractor is regularly associated with the person or entity and is engaged in the same or related type of business as the person or entity, by doing the following:

(A) Signing a written confidentiality agreement prepared by the Attorney General's Office that 1) restricts use of the no-call database exclusively for the purpose of compliance with sections 407.1095 to 407.1113, RSMo 2000, as amended from time-to-time, and 2) prohibits the transfer of the copy of the no-call database to any person or entity who has not submitted the signed written confidentiality agreement and payment to the Attorney General's Office for receipt of a copy of the no-call database; and

(B) Submitting the signed confidentiality agreement along with payment in an amount equal to twenty-five [\$25] per quarter for each Missouri area code to the Attorney General's Office for providing a computer disk copy of the no-call database. Those persons or entities desiring to obtain access to only part of the no-call database may do so by submitting the signed confidentiality agreement along with a request designating by area code the portion or portions of the no-call database they desire and providing payment in the amount of twenty-five [\$25] per quarter per area code to the Attorney General's Office for providing a computer disk copy of the requested portion of the no-call database.

(2) A person or entity who initiates any voice communication over a telephone line from a live operator, through the use of ADAD equipment or by other means for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services and who claims that such communication falls under one of the exclusions to the definition of "telephone solicitation" appearing in section 407.1095(3), RSMo, as amended, may provide notice in the form of a notarized affidavit to the Attorney General's Office of that person or entity's intention to utilize the claimed exclusion along with an explanation of the basis for that person's claimed exclusion. The Attorney General's Office may investigate the claimed exclusion using the powers available under section 407.1110, RSMo, as amended. Submitting an affidavit to the Attorney General of intention to utilize a claimed exclusion shall not, in and of itself, establish the section 407.1110.4, RSMo, defense to an action brought for violation of section 407.1098, RSMo, or section 407.1107, RSMo.

Authority: section 407.1101, RSMo (2000).

Title 15 -- ELECTED OFFICIALS**Division 60 -- Attorney General****Chapter 13 -- Rules for the Establishment of a Missouri No-Call Database****15 CSR 60-13.070 Other Matters Relating to the Database of Residential Subscribers' Notices of Objection to Receiving Telephone Solicitations.**

Purpose: This rule sets forth other matters relating to the database of residential subscribers' notice of objection to receiving telephone solicitations.

(1) No person who obtains a copy of the no-call database may use that information for purposes other than compliance with sections 407.1098 and 407.1101, RSMo, 2000, as amended from time-to-time.

(2) The Attorney General's Office may use monies collected pursuant to 15 CSR 60-13.060 to carry out the functions set forth in sections 407.1095 to 407.1113, RSMo, 2000, as

amended from time-to-time.

Authority: section 407.1101, RSMo (2000).



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PART 310: TELEMARKETING SALES RULE

Sec.

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- 310.3 Deceptive telemarketing acts or practices.
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- 310.7 Actions by states and private persons.
- 310.8 Severability.

Authority: 15 U.S.C. 6101-6108.

§ 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108.

§ 310.2 Definitions.

- (a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.
- (b) *Attorney general* means the chief legal officer of a State.
- (c) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.
- (d) *Commission* means the Federal Trade Commission.
- (e) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
- (f) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.
- (g) *Credit card sales draft* means any record or evidence of a credit card transaction.
- (h) *Credit card system* means any method or procedure used to process credit card

transactions involving credit cards issued or licensed by the operator of that system.

(i) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(k) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.

(l) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(m) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(n) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services.

(o) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(p) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(q) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(r) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(s) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(t) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.

(u) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more

than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

§ 310.3 Deceptive telemarketing acts or practices.

(a) **Prohibited deceptive telemarketing acts or practices.** It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays[1] for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:

- (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;[2]
- (ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;
- (iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;
- (iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and
- (v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(2) Misrepresenting, directly or by implication, any of the following material information:

- (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;
- (ii) Any material restriction, limitation, or condition to purchase, receive, or use

goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or

(vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization;

(3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

(ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:

(A) The date of the draft(s);

(B) The amount of the draft(s);

(C) The payor's name;

(D) The number of draft payments (if more than one);

(E) A telephone number for customer inquiry that is answered during normal business hours; and

(F) The date of the customer's oral authorization; or

(iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

(A) All of the information contained in §§ 310.3(a)(3)(ii)(A)-(F); and

(B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and

(4) Making a false or misleading statement to induce any person to pay for goods or services.

(b) **Assisting and facilitating.** It is a deceptive telemarketing act or practice and a

violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a) or (c), or § 310.4 of this Rule.

(c) **Credit card laundering.** Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

- (1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;
- (2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or
- (3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

§ 310.4 Abusive telemarketing acts or practices.

(a) **Abusive conduct generally.** It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

- (1) Threats, intimidation, or the use of profane or obscene language;
- (2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:
 - (i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and
 - (ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;
- (3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.

(b) Pattern of calls. (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or

(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) if:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii);

(ii) It has trained its personnel in the procedures established pursuant to § 310.4(b)(2)(i);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with § 310.4(b)(1)(ii); and

(iv) Any subsequent call is the result of error.

(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

- (1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;
- (2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;
- (3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;^[3]
- (4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and
- (5) All verifiable authorizations required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by § 310.5(a) in any form, and in the manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by § 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§ 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with § 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

§ 310.6 Exemptions.

The following acts or practices are exempt from this Rule:

- (a) The sale of pay-per-call services subject to the Commission's "Trade Regulation Rule

Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308;

(b) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR Part 436;

(c) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller;

(d) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer;

(e) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in §§ 310.4(a)(2) or (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit;

(f) Telephone calls initiated by a customer in response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3 (a)(1) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, goods or services described in §§ 310.4(a)(2) or (3), or direct mail solicitations that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit; and

(g) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies; provided, however, that § 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

§ 310.7 Actions by States and private persons.

(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized State official from proceeding in State court on the basis of an alleged

violation of any civil or criminal statute of such State.

§ 310.8 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark
Secretary

Footnotes:

1. When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.
2. For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.3(a)(1)(i) of this Rule.
3. For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with § 310.5(a)(3) of this Rule.

*** THIS SECTION IS CURRENT THROUGH THE NOVEMBER 19, 2001 ISSUE OF ***

*** THE FEDERAL REGISTER ***

TITLE 47 -- TELECOMMUNICATION
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER B -- COMMON CARRIER SERVICES
PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS
SUBPART L -- RESTRICTIONS ON TELEPHONE SOLICITATION

47 CFR 64.1200

§ 64.1200 Delivery restrictions.

(a) No person may:

(1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice,

(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

(2) Initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by § 64.1200(c) of this section.

(3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

(4) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(b) For the purpose of § 64.1200(a) of this section, the term emergency purposes means calls made necessary in any situation affecting the health and safety of consumers.

(c) The term telephone call in § 64.1200(a)(2) of this section shall not include a call or message by, or on behalf of, a caller:

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- (1) That is not made for a commercial purpose,
- (2) That is made for a commercial purpose but does not include the transmission of any unsolicited advertisement,

(3) To any person with whom the caller has an established business relationship at the time the call is made, or

(4) Which is a tax-exempt nonprofit organization.

(d) All artificial or prerecorded telephone messages delivered by an automatic telephone dialing system shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player which placed the call) or address of such business, other entity, or individual.

(e) No person or entity shall initiate any telephone solicitation to a residential telephone subscriber:

(1) Before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), and

(2) Unless such person or entity has instituted procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(i) Written policy. Persons or entities making telephone solicitations must have a written policy, available upon demand, for maintaining a do-not-call list.

(ii) Training of personnel engaged in telephone solicitation. Personnel engaged in any aspect of telephone solicitation must be informed and trained in the existence and use of the do-not-call list.

(iii) Recording, disclosure of do-not-call requests. If a person or entity making a telephone solicitation (or on whose behalf a solicitation is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name and telephone number on the do-not-call list at the time the request is made. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the solicitation is made, the person or entity on whose behalf the solicitation is made will be liable for any failures to honor the do-not-call request. In order to protect the consumer's privacy, persons or entities must obtain a consumer's prior express consent to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a solicitation is made or an affiliated entity.

(iv) Identification of telephone solicitor. A person or entity making a telephone solicitation must provide the called party with the name of the

individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. If a person or entity makes a solicitation using an artificial or prerecorded voice message transmitted by an autodialer, the person or entity must provide a telephone number other than that of the autodialer or prerecorded message player which placed the call. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(v) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(vi) Maintenance of do-not-call lists. A person or entity making telephone solicitations must maintain a record of a caller's request not to receive future telephone solicitations. A do not call request must be honored for 10 years from the time the request is made.

(f) As used in this section:

(1) The terms automatic telephone dialing system and autodialer mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(2) The term telephone facsimile machine means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(3) The term telephone solicitation means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

(i) To any person with that person's prior express invitation or permission;

(ii) To any person with whom the caller has an established business relationship; or

(iii) By or on behalf of a tax-exempt nonprofit organization.

(4) The term established business relationship means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

(5) The term unsolicited advertisement means any material advertising the

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commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

HISTORY:

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AUTHORITY:

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1).

NOTES:

[EFFECTIVE DATE NOTE: 60 FR 42069, Aug. 15, 1995, which revised paragraphs (e)(2)(iv), (e)(2)(vi), and (f)(3)(iii), is effective Sept. 14, 1995.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

SUPPLEMENTAL PUBLICATIONS:

Annual Reports of the Federal Communications Commission to Congress.

FCC Record of Orders and Decisions.

Communications Act of 1934 (with amendments and index thereto), Recap. Version to May 1989.

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[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Petitions for Reconsideration, see: 51 FR 2501, 6119, 11037, 11039, 44478, (1986); 52 FR 23305, 23551 (1987); 53 FR 4624, 8903, 13272, 17040, 40894 (1988); 54 FR 13689, 18889, 39152, 49995 (1989); 55 FR 7494, 13907, 14285, 50181, 52172 (1990); 56 FR 48442, 57823 (1991); 57 FR 3952, 27367 (1992); 58 FR 14239, Mar. 16, 1993; 58 FR 14328, Mar. 17, 1993; 58 FR 37867, July 14, 1993; 59 FR 40365, July 28, 1993; 58 FR 45842, Aug. 31, 1993; 58 FR 48459, Sept. 16, 1993; 58 FR 51251, Oct. 1, 1993; 58 FR 63086, Nov. 30, 1993; 59 FR 13661, Mar. 23, 1994; 59 FR 28014, May 31, 1994; 59 FR 37439, July 22, 1994; 59 FR 44272, Aug. 26, 1994; 59 FR 44340, Aug. 29, 1994; 59 FR 55594, Nov. 8, 1994; 59 FR 66254, Dec. 23, 1994; 60 FR 3099, Jan. 13, 1995; 60 FR 3773, Jan. 19, 1995; 60 FR 31257, 31258, June 14, 1995; 60 FR 43981, Aug. 24, 1995; 64 FR 52464, Sept. 29, 1999; 65 FR 5267, Feb. 3, 2000.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Final Reports, see: 59 FR 35631, July 13, 1994.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Periodic Reviews of Regulations, see: 59 FR 3633, Jan. 25, 1994.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Policy Statements, see: 51 FR 9794, 20975 (1986); 52 FR 16386 (1987); 53 FR 13270, 15557 (1988); 56 FR 56937 (1991); 61 FR 11163, Mar. 19, 1996; 62 FR 34634, 34648, June 28, 1997; 65 FR 80367, Dec. 21, 2000.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter 1 Orders, see: 51 FR 4918 (1986); 53 FR 501 (1988); 55 FR 7898 (1990); 57 FR 3133, 6481, 33275 (1992); 58 FR 14161 (1993); 59 FR 61284 (1994); 60 FR 18778, 35507, 53544, 53877 (1995); 61 FR 2452, Jan. 26, 1996; 61 FR 14672, Apr. 3, 1996; 61 FR 26466, May 28, 1996; 61 FR 30531, June 17, 1996; 61 FR 35964, July 9, 1996; 62 FR 7690, 7720, Feb. 20, 1997; 62 FR 16093, 16099, Apr. 4, 1997; 62 FR 36216, July 7, 1997; 62 FR 56111, Oct. 29, 1997; 63 FR 42275, Aug. 7, 1998; 63 FR 45956, Aug. 28, 1998; 64 FR 54561, Oct. 7, 1999; 64 FR 61527, Nov. 12, 1999; 64 FR 68053, Dec. 6, 1999; 65 FR 50652, Aug. 21, 2000; 65 FR 55923, Sept. 15, 2000; 66 FR

10965, Feb. 21, 2001.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 64 Memorandum Opinion and Orders, see: 54 FR 27467, 27468, 29022, 50623 (1989); 57 FR 2842, 62481 (1992); 58 FR 11195, Feb. 24, 1993; 58 FR 21408, Apr. 21, 1993; 58 FR 53663, Oct. 18, 1993; 60 FR 7131, Feb. 7, 1995; 60 FR 56124, Nov. 7, 1995; 62 FR 46447, Sept. 3, 1997; 64 FR 4999, Feb. 2, 1999.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 64 Report and Orders, see: 52 FR 20714 (1987); 54 FR 3453, 12199 (1989); 57 FR 37106 (1992); 59 FR 26756, Mar. 24, 1994; 62 FR 8633, Feb. 26, 1997; 62 FR 19056, 19057, Apr. 18, 1997; 62 FR 19686, Apr. 23, 1997; 62 FR 47369, Sept. 9, 1997; 63 FR 45134, Aug. 24, 1998; 63 FR 54379, Oct. 9, 1998; 66 FR 9674, Feb. 9, 2001; 66 FR 50841, Oct. 5, 2001.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 64 Requests for Comments, see: 59 FR 19118, Apr. 21, 1994; 63 FR 36191, July 2, 1998.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 64 Comment time extended, see: 59 FR 19119, Apr. 21, 1994; 59 FR 39300, Aug. 2, 1994.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 64 Declaratory rulings, see: 61 FR 8879, Mar. 6, 1996; 61 FR 36653, July 12, 1996.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 64 Waivers, see: 51 FR 24350 (1986); 61 FR 20746, May 8, 1996; 62 FR 24583, 24585, May 6, 1997; 62 FR 58686, Oct. 30, 1997; 62 FR 60034, Nov. 6, 1997; 62 FR 64759, Dec. 9, 1997; 63 FR 37069, July 9, 1998.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 64 Order on Reconsideration, see: 62 FR 55762, Oct. 28, 1997.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 64 Policy Statement, see: 64 FR 55164, Oct. 12, 1999.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Part 64 Clarification Orders, see: 66 FR 53545, Oct. 23, 2001.]

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